

### ***DETAILED ACTION***

Claims 1-8 are currently pending in this Application.

### **Information Disclosure Statement**

Applicant's Information Disclosure Statements, filed on August 19, 2005 have been considered. Please refer to Applicant's copies of the 1449 submitted herewith.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a), which forms the basis for all obviousness rejections, set forth in this Office action:

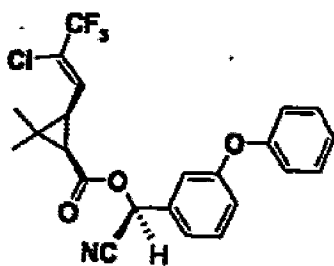
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 034 954.

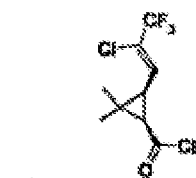
The present invention is directed to a process of preparing gamma-cyhalothrin,



comprising steps: chlorinating compounds of Formula



to

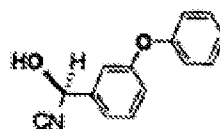


give

; esterifying



with

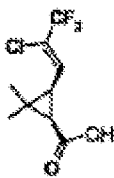


to form the gamma-cyhalothrin.

Determination of the scope and content of the prior art (MPEP §2141.01)

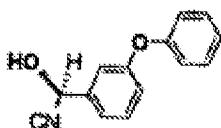
EP 0304954 A2 in Example 19, page 37 teach process for preparing cyhalothrin by

reaction compounds of Formula



with (S)-cyanohydrin of 3-phenoxy benzaldehyde

of Formula



Ascertainment of the difference between the prior art and the claims (MPEP §2141.02)

The difference between the invention of the present application and example 19 of EP 0304954 A2 is that in the claims of this application the acid is converted into the corresponding acid chloride which is then reacted with alcohol to give the desired gamma-cyhalothrin, whereas

Art Unit: 1626

in Example 19 of EP 0304954 A2, acid is directly treated with alcohol to give the desired product.

*Finding of prima facie obviousness--rational and motivation (MPEP §2142-2413)*

EP 0304954 A2, teach that pyrethroids can be prepared not only by condensation of the acid with the (S)-cyanohydrin of 3-phenoxy benzaldehyde , but also discloses the option of performing the esterification by treatment of (S)-cyanohydrin of 3-phenoxy benzaldehyde with the acid halide ( See page 21, lines 22-30). Therefore, in the absence the showing of unobvious results, it would have been obvious to one skilled in the art the acid to acid chloride before the reaction with alcohol as is suggested by EP 0304954 A2.

***Telephone Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamal A Saeed, Ph.D. whose telephone number is (571) 272-0705. The examiner can normally be reached on M-T 7:00 AM- 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Joseph K. McKane, can be reached at (571) 272-0699.

Communication via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise requires a signature, may be used by applicant and should be addressed to [joseph.mckane@uspto.gov]. All Internet e-mail communications will be made of record in the application file. PTO employees will not communicate with applicant via Internet e-mail where sensitive data will be exchanged or where there exists a possibility that sensitive

Art Unit: 1626

data could be identified unless there is of record an express waiver of the confidentiality requirements under 35 U.S.C. 122 by the applicant. See the Interim Internet Usage Policy published by the Patent and Trademark Office Official Gazette on February 25, 1997 at 1195 OG 89.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or public PAIR only. For more information about the pair system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

/Kamal A Saeed, Ph.D./

Primary Examiner, Art Unit 1626

Application/Control Number: 10/546,138  
Art Unit: 1626

Page 6